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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FIRST FINANCIAL SECURITY,  
INC., a Delaware corporation,

Plaintiff,

vs.

FREEDOM EQUITY GROUP, LLC, a  
California limited liability company,

Defendant.

CASE NO. 14-CV-1521-BEN (BGS)

**ORDER GRANTING MOTION TO  
DISMISS**

[Docket No. 8]

Before this Court is the Motion to Dismiss filed by Defendant Freedom Equity Group, LLC (FEG). (Docket No. 8). For the reasons stated below, the Motion is **GRANTED**.

**BACKGROUND**

Plaintiff First Financial Security, Inc. (FFS) is a life insurance brokerage agency which sells life insurance policies through a national sales force of independent contractors. (Compl. ¶¶ 6-7). The sales force is organized into teams, each of which has a hierarchical structure with a tiered compensation plan. (*Id.* ¶ 8). FEG is also a life insurance brokerage company using a similar independent contractor model. (*Id.* ¶ 11). The two companies are competitors. (*Id.* ¶ 12).

All of FFS's contractors enter into an identical Sales Contractor Agreement and FFS Terms and Conditions (collectively, "SC Agreement"). (*Id.* ¶ 13 & Ex. A). The SC Agreement imposes restrictions on the ability of contractors to induce or attempt

1 to induce any FFS contractor to terminate his or her affiliation with FFS. (*Id.* ¶ 14 &  
2 Ex. A). In relevant part, the SC Agreement states that:

3 Sales Contractor covenants that he/she will not, at any time during the  
4 term of this Agreement, and for a period of two (2) years thereafter,  
directly or indirectly:

5 i) induce or attempt to induce any person who is contractually affiliated  
6 with FFS as a Sales Contractor or in other capacity, or any member of  
FFS's administrative staff, to terminate their relationship with FFS; or

7 ii) hire, induce or attempt to hire or induce any such persons to sell or  
8 solicit products and services that are competitive with the Products and  
Services for any person or entity other than FFS.

9 (*Id.* Ex. A § C(3)).

10 The SC Agreement also prohibits contractors from inducing, or attempting to  
11 induce, FFS customers to terminate or reduce coverage under their policies. (*Id.* ¶ 15).

12 In relevant part:

13 Sales Contractor covenants that he/she will not, at any time during the  
14 term of this Agreement, and for a period of two (2) years thereafter,  
directly or indirectly, individually or in concert with another, induce or  
15 attempt to induce any Customer to terminate, reduce coverage under or  
replace any of the [FFS] Products and Services that have been sold by  
16 Sales Contractor or his/her Downline Sales Contractors.

17 (*Id.* Ex. A § C(2)).

18 The SC Agreement also contains restrictions on the use, dissemination, or  
19 revelation of confidential information and trade secrets, including customer lists and  
20 lists of FFS contractors. (*Id.* ¶ 16 & Ex. A § C(4)). It requires the return of all  
21 documents, files, and lists containing such information upon termination of the  
22 agreement. (*Id.* ¶ 17 & Ex. A § C(4)).

23 Contractors are also required to acknowledge that all members of the sales  
24 network have executed identical agreements, and that inducing or attempting to induce  
25 a breach constitutes wrongful interference with contractual rights of FFS with that  
26 member. (*Id.* ¶ 19 & Ex. A § C(6)).

27 Two of FFS's sales contractors were Gilles Moua and Mai Lee. (*Id.* ¶ 21).  
28 Moua was an "Executive Field Chairman," the highest compensation level of the FFS  
compensation plan. (*Id.* ¶ 24).

1 FFS alleges on “information and belief” that in April 2014, “Moua, Lee or both  
2 of them were in talks with FEG concerning the mass solicitation of FFS contractors to  
3 work at FEG, in violation of the SC Agreement.” (*Id.* ¶ 20). FFS asserts that this belief  
4 is based on “among other things, information learned by FFS in the course of  
5 negotiating with Moua concerning a dispute over compensation.” (*Id.*)

6 FFS alleges that it learned on or about May 10, 2014 that Moua and Lee were  
7 “soliciting and inducing FFS sales contractors to leave FFS and join FEG.” (*Id.* ¶ 21).  
8 Moua and Lee resigned on May 10, 2014. (*Id.* ¶ 22). The same day, Moua and Lee  
9 allegedly held a meeting for FFS sales contractors at their home. (*Id.* ¶ 23). They  
10 “invited certain key team members” to the meeting and encouraged Moua’s team  
11 members to terminate their relationship with FFS to work for Moua and Lee at FEG.  
12 (*Id.*) FFS alleges that it had received 250 sales contractor resignations by May 12,  
13 2014; approximately 500 resignations by May 13; over 600 resignations by May 14;  
14 and over 1,300 resignations by May 22. (*Id.* ¶¶ 25-28). FFS asserts that there were  
15 only 732 sales contractor resignations from 2003 to April 2014. (*Id.* ¶ 29). FFS alleges  
16 that Moua and Lee breached their SC Agreement by recruiting other contractors during  
17 the SC Agreement, and that the other contractors breached their agreements by  
18 recruiting lower-level contractors. (*Id.* ¶ 30). FFS claims, based on projected growth  
19 in revenues from Moua and Lee’s sales team, that it will suffer more than \$1.6 million  
20 in damages. (*Id.* ¶ 31).

21 On May 15, 2014, FFS sent FEG a letter informing FEG of the SC Agreement,  
22 and Moua and Lee’s breaches. (*Id.* ¶ 33 & Ex. B). The letter included a copy of the  
23 SC Agreement. (*Id.* ¶ 33 & Ex. B). Among other things, the letter demanded written  
24 confirmation from FEG that it would not interfere with FFS’s contractual relationship  
25 with Moua or any other current or former FFS representative. (*Id.* Ex. B).

26 FEG responded in a letter dated May 23, 2014. (*Id.* ¶ 34 & Ex. C). As  
27 characterized by FFS, the letter confirmed that Moua’s team was at FEG, admitted that  
28 FEG is an FFS competitor, and indicated that FEG would continue working with Moua

1 and other FFS sales contractors. (*Id.* ¶ 34).

2 FFS and FEG both serve as a “Master General Agent” for insurance carrier  
3 National Life Group, known as “LSW,” allowing them to sell policies underwritten by  
4 LSW. (*Id.* ¶¶ 35-37). The contract between LSW and FFS prohibits recruiting agents  
5 already appointed to do business with LSW. (*Id.* ¶ 38). FFS alleges that FEG and  
6 LSW “likely have the same, or a substantially similar agreement.” (*Id.*)

7 FFS also alleges that it maintains confidential customer lists and contractor lists  
8 which it asserts have independent economic value. (*Id.* ¶¶ 39-42). FFS demanded that  
9 Moua and Lee return all confidential FFS information, including customer lists and  
10 sales contractor lists. (*Id.* ¶ 43). They allegedly have not done so. (*Id.* ¶¶ 44-46).

11 On June 23, 2014, FFS filed a Complaint asserting: 1) intentional interference  
12 with contractual relations and 2) violation of California’s Business and Professions  
13 Code §§ 17200 *et seq.* (Docket No. 1). They seek damages, injunctive relief, costs,  
14 and expenses. (*Id.* at p. 10-11).

15 With respect to the first claim, FFS contended that FEG intentionally interfered  
16 with FFS’s contractual relationship with FFS sales contractors because:

17 (1) there was a valid contract between FFS and the FFS sales contractors;  
18 (2) FEG had knowledge of the contract; (3) FEG intentionally induced a  
19 breach of the contractual relationship between FFS and the FFS sales  
20 contractors; (4) there was an actual breach of the contractual relationship  
21 between FFS and the sales contractors; and (5) the breach has caused, and  
22 will continue to cause, substantial damage to FFS.

23 (*Id.* ¶ 48). It alleges that, at all “material times, FEG had knowledge of the SC  
24 Agreement and that Moua and his team members that joined FEG breached the SC  
25 Agreement.” (*Id.* ¶ 50). It alleged that despite this knowledge, FEG “has, and  
26 continues to, intentionally induce FFS sales contractors to breach the SC Agreement.”  
27 (*Id.* ¶ 51). It states that “FEG has indicated that it will continue its relationship with  
28 Moua, Lee and the illegally recruited FEG sales contractors that have left FFS to join  
FEG.” (*Id.*)

With respect to the second claim, FFS alleges that FEG has engaged in  
“wrongful and/or unlawful acts or practices in the conduct of a business” that constitute

1 unfair competition within the meaning of the statute. (*Id.* ¶ 57). It claims that these  
2 acts or practices

3 include, but are not limited to:

4 (i) Intentional interference with the performance of a pre-existing contract  
that the Defendant had knowledge of;

5 (ii) Intentionally and wrongfully inducing the breach of the  
contract;

6 (iii) Benefitting from use of FFS's confidential trade secrets, including  
customer lists and sales contractor lists that former FFS sales contractors  
now at FEG have refused to return to FFS;

7 (iv) Competing against FFS by poaching an entire sales team that FFS  
itself assembled; and

8 (v) Causing significant damages to FFS in an amount that cannot be  
calculated precisely at this time, but which is estimated to exceed  
9 \$1,600,000 annually.

10 (*Id.*)

11 Defendant filed the instant motion to dismiss on July 15, 2014, asserting that  
12 Plaintiff failed to state a claim upon which relief could be granted, pursuant to Federal  
13 Rule of Civil Procedure 12(b)(6). Plaintiff responded on August 11, 2014. (Docket  
14 No. 11). Defendant replied on August 18, 2014. (Docket No. 12).

## 15 LEGAL STANDARD

### 16 A. Motion to Dismiss Standard

17 Under Federal Rule of Civil Procedure 12(b)(6), a district court may grant a  
18 motion to dismiss if, taking all factual allegations as true, the complaint fails to state  
19 a plausible claim for relief on its face. FED. R. CIV. P. 12(b)(6); *Bell Atl. Corp. v.*  
20 *Twombly*, 550 U.S. 544, 556-57 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678  
21 (2009). Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "a  
22 short and plain statement of the claim showing that the pleader is entitled to relief."

23 A Rule 12(b)(6) dismissal may be based on either a "lack of a cognizable legal  
24 theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008)  
25 (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)). Under  
26 this standard, dismissal is appropriate if the complaint fails to state enough facts to  
27 raise a reasonable expectation that discovery will reveal evidence of the matter  
28

1 complained of, or if the complaint lacks a cognizable legal theory under which relief  
2 may be granted. *See Twombly*, 550 U.S. at 556.

3 In analyzing a pleading, the Court sets conclusory factual allegations aside,  
4 accepts all non-conclusory factual allegations as true, and determines whether those  
5 non-conclusory factual allegations accepted as true state a claim for relief that is  
6 plausible on its face. *See Iqbal*, 556 U.S. at 678-79; *Sprewell v. Golden State Warriors*,  
7 266 F.3d 979, 988 (9th Cir. 2001) (noting that the court need not accept conclusory  
8 allegations, unwarranted deductions of fact, or unreasonable inferences as true). “A  
9 claim has facial plausibility when the plaintiff pleads factual content that allows the  
10 court to draw the reasonable inference that the defendant is liable for the misconduct  
11 alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). “Threadbare  
12 recitals of the elements of a cause of action, supported by mere conclusory statements,  
13 do not suffice.” *Id.*; *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) (on motion  
14 to dismiss, a court is “not bound to accept as true a legal conclusion couched as a  
15 factual allegation”) (cited approvingly in *Twombly*, 550 U.S. at 555). And while “[t]he  
16 plausibility standard is not akin to a probability requirement,” it does “ask[] for more  
17 than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678  
18 (internal quotation marks and citation omitted). “[T]he pleading standard Rule 8  
19 announces does not require ‘detailed factual allegations,’ but it demands more than an  
20 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (citations omitted).  
21 In determining plausibility, the Court is permitted “to draw on its judicial experience  
22 and common sense.” *Id.* at 679 (citation omitted).

### 23 B. Intentional Interference with Contractual Relations

24 In California, intentional interference with contractual relations requires a  
25 plaintiff to show (1) a valid contract between plaintiff and a third party; (2) defendant’s  
26 knowledge of this contract; (3) defendant’s intentional acts designed to induce a breach  
27 or disruption of the contractual relationship; (4) actual breach or disruption of the  
28 contractual relationship; and (5) resulting damage. *Quelimane Co., Inc. v. Stewart Title*



1 *Guar. Co.*, 19 Cal. 4th 26, 55 (1998) (citation and quotation marks omitted).

2 C. California Business & Professions Code §§ 17200, *et seq.*

3 California's Business and Professions Code authorizes actions against persons  
4 or business entities who engage in "unfair competition," which includes "any unlawful,  
5 unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
6 advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of  
7 Part 3 of Division 7 of the Business and Professions Code." Cal. Bus. & Prof. Code  
8 §§ 17200 *et seq.*; *Quelimane Co.*, 19 Cal. 4th at 42. In this case, Plaintiff states that its  
9 Section 17200 claim is premised on its claim for intentional interference with  
10 contractual relations. (Opp'n at 1).

### 11 DISCUSSION

12 FEG's Motion is based upon its contention that FFS has not provided sufficient  
13 factual allegations with regard to whether FEG committed "intentional acts designed  
14 to induce a breach or disruption of the contractual relationship." The Court notes that  
15 because FFS concedes that its second cause of action is premised upon its first claim,  
16 and no party contends that the second claim can survive if the first does not, a failure  
17 to state a claim as to the first cause of action requires dismissal of the entire action.

18 FEG contends that the only facts alleged by FFS are that "FEG had a meeting  
19 with some potential agents, and now those agents are working with FEG." (Mot. at 5).  
20 FEG discusses several of the allegations in an effort to point out their shortcomings.  
21 For instance, it notes that in alleging that Moua and Lee had talks with FEG in April  
22 2014 in paragraph 20, FFS does "not allege that FEG encouraged the breach of the SC  
23 Agreement, and does not preclude the possibility of FEG, [sic] discouraging any such  
24 breach." (*Id.* at 2). It also points out that FFS does not allege that FEG was doing any  
25 soliciting at Moua and Lee's May 10 meeting, or that it even knew about the meeting.  
26 (*Id.* at 2-3). FEG also discusses portions of FEG's letter, which FFS attached to the  
27 Complaint as an exhibit, which FFS did not quote. (*Id.* at 3). Specifically, FEG  
28 highlights that the letter states that "FEG did not pursue Mr. Moua, or induce Mr.

1 Moua and his team to join us” and that FEG complied with all standards in the  
 2 industry. (*Id.*) FEG states that FFS’s allegations for each cause of action merely list  
 3 the elements of the cause of action. (*Id.* at 3-4).

4 FEG cites at length to the pleading requirements laid out in *Bell Atlantic Corp.*  
 5 *v. Twombly* and *Ashcroft v. Iqbal*. (*Id.* at 6-7). FEG contends that FFS “needs to plead  
 6 factual content that allows the court to draw the reasonable inference that the defendant  
 7 is liable for the misconduct alleged,” but that the Complaint is “devoid of anything but  
 8 the thinnest, most conclusory factual allegations.” (*Id.* at 8).

9 In response, FFS asserts that it has pled sufficient contents to fulfill the  
 10 requirements of Rule 8(a) and allow the Court to draw the reasonable inference that  
 11 FEG is liable for the misconduct alleged.<sup>1</sup> (Opp’n at 1, 3). FFS restates the chief  
 12 allegations of the Complaint. (*Id.* at 1-2). It quotes from the Ninth Circuit’s decision  
 13 in *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990 (9th Cir. 2014):

14 First, to be entitled to the presumption of truth, allegations in a complaint  
 15 or counterclaim may not simply recite the elements of a cause of action,  
 16 but must contain sufficient allegations of underlying facts to give fair  
 17 notice and enable the opposing party to defend itself effectively. Second,  
 the factual allegations that are taken as true must plausibly suggest an  
 entitlement to relief, such that it is not unfair to require the opposing party  
 to be subjected to the expense of discovery and continued litigation.

18 *Id.* at 996 (citation omitted).

19 FFS argues that the allegations of the Complaint give FEG notice of its claims,  
 20 as evidenced by FEG’s motion. (Opp’n at 3). It contends that the Motion demonstrates  
 21 that FEG understands what FFS is alleging and that it has sufficient information to  
 22 defend itself. (*Id.*) For instance, it points to FEG’s comments regarding paragraph 20  
 23 as proof that FEG was able to identify “potential defense that it can raise at an  
 24 appropriate time.” (*Id.* at 3-4).

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25  
 26 <sup>1</sup>The Court notes that Plaintiff refers to the Motion to Dismiss as “dilatory.”  
 27 (Opp’n at 1). However, Plaintiff does not pursue this argument or ask the Court to  
 28 deny the Motion on this basis. Plaintiff did not move for default judgment. Review  
 of the docket indicates that two “Proof of Service Summons & Complaint” documents  
 were filed with respect to FEG. A June 26, 2014 filing indicated personal service on  
 June 24 (Docket No. 4) and a July 7, 2014 filing indicated personal service on another  
 individual on June 30 (Docket No. 6). The Motion was filed on July 15, 2014.



1 FFS contends that the allegations are also sufficient to show that it is plausibly  
 2 entitled to relief. (*Id.* at 4-5). FFS contends that it did not need to allege that FEG  
 3 encouraged a breach, and notes that FEG does not “deny or attempt to explain” the  
 4 meeting with Moua and Lee in its motion. (*Id.* at 5). It points out that FEG has not  
 5 offered alternative explanations, and merely suggests that the allegations do not  
 6 preclude the possibility that FEG discouraged a breach. (*Id.* at 7). FFS contends that  
 7 the “specific contents” of the conversation have yet to be ascertained, and that FFS  
 8 could only allege the events and circumstances of which it was aware when it filed the  
 9 Complaint. (*Id.* at 5). It argues that it has alleged enough to permit the Court to  
 10 determine that it is plausible, if not probable, that FFS could obtain relief after  
 11 discovery. (*Id.*)

12 FEG’s reply contends that it offered an alternative explanation of the contact,  
 13 and that its explanation of events in the letter attached to the complaint is “much more  
 14 plausible than Plaintiff’s allegation that FEG, with malice in its heart, and totally  
 15 unmindful of the damage that would result to its reputation in the community,  
 16 aggressively, affirmatively, and knowingly, interfered with a contract, and went after  
 17 FSS agents.” (Reply at 2).

18 FFS also directs the Court to an unpublished Northern District of California  
 19 opinion, *Raymat Material, Inc. v. A&C Catalysts, Inc.*, No. C 130567 WHA, 2013 WL  
 20 5913778 (N.D. Cal. Oct. 31, 2013). There, the defendant filed a third-party complaint  
 21 in which it alleged that the third-party defendant had intentionally interfered with its  
 22 relationship with the plaintiff. *Id.* at \*1. The district court found that the complaint  
 23 sufficiently stated a claim where the complaint alleged that the third-party defendant  
 24 with “full knowledge” of the agreement, engaged in negotiations intended to interfere  
 25 with the contract that existed between the plaintiff and the defendant. *Id.* at \*3. The  
 26 complaint alleged that the third party-defendant had cancelled its purchase orders in  
 27 order to make it more difficult for the defendant to perform under the agreement with  
 28 the plaintiff, thereby allowing the third-party defendant to buy from the plaintiff

1 directly. *Id.*

2 Finally, FFS submits a copy of a District of Minnesota order granting a  
3 temporary restraining order against Moua and Lee. (Davidson Decl., Ex. A). FEG  
4 contends that Moua and Lee are not in privity with FEG and that the order has no  
5 relevance. (Reply at 2).

6 Upon full review of the briefing, the Court determines that FFS has not alleged  
7 sufficient facts from which this Court can conclude that it is plausibly entitled to relief.  
8 FFS alleges that Moua, or Lee, or both talked with FEG about mass solicitation of FFS  
9 contractors in violation of the SC Agreement. (Compl. ¶ 20). The Court agrees that  
10 FFS need not necessarily provide details of the meetings with Lee or Moua. FFS  
11 presents no non-conclusory allegations from which this Court could infer that FEG was  
12 aware of the SC Agreements or their contents during the April 2014 talks. Indeed, it  
13 is somewhat unclear whether FFS is alleging that FEG had knowledge at that time, as  
14 the only basis for FEG's knowledge mentioned in the Complaint is the letter sent on  
15 May 15, 2014. To the extent FFS believes that misconduct can be inferred from the  
16 very fact of the meeting under the circumstances, it does not make the factual  
17 allegations about the circumstances to allow the Court to draw this inference. The  
18 Complaint does not allege that FEG was in any way involved, or even aware of,  
19 subsequent solicitation efforts. To the extent FFS seeks to hold FEG accountable for  
20 actions after its letter, it fails to explain what "intentional actions" it believes took  
21 place. FFS alleges that FEG has indicated it will "continue its relationship" with  
22 former FFS contractors, but FFS does not explain how this intentionally induces a  
23 breach. Although FFS presents a number of facts which might suffice to plausibly  
24 allege that Moua and Lee breached the SC Agreement, this does not establish that FEG  
25 committed any "intentional acts" to encourage them to do so.

26 FFS points to FEG's failure to deny or explain certain things in its Motion.  
27 However, FFS provides no authority that allows a plaintiff shift the burden to the  
28 defendant to provide detailed alternative explanations where the plaintiff's own

1 allegations are insufficient. FFS also suggests that FEG's comments regarding the  
2 shortcomings of paragraph 20 shows that FEG is able to identify defenses to raise at  
3 an "appropriate time." However, an "appropriate time" to raise such a defense is at the  
4 motion to dismiss stage. Finally, the Court does not believe that *Raymat Materials*  
5 compels a contrary result. Among other things, the *Raymat Materials* complaint  
6 alleged that the third-party defendant "willingly engaged Raymat despite its knowledge  
7 of the illegality of that engagement." 2013 WL 5913778, at \*3. Here, FFS alleges only  
8 a conversation about mass solicitation, without alleging that FEG encouraged them to  
9 engage in a mass solicitation or clearly indicating whether it is alleging that FEG was  
10 aware that mass solicitation would constitute a breach.

11 Accordingly, the Motion to Dismiss is **GRANTED**. The action is **DISMISSED**  
12 **WITHOUT PREJUDICE** and FFS is given leave to amend. Any Amended  
13 Complaint must be filed within twenty-one (21) days of the date this Order is filed.  
14 This does not constitute leave to amend the pleading to add additional parties or causes  
15 of action.

16 **IT IS SO ORDERED.**

17  
18 Date: August 20, 2014

  
HON. ROGER T. BENITEZ  
United States District Judge